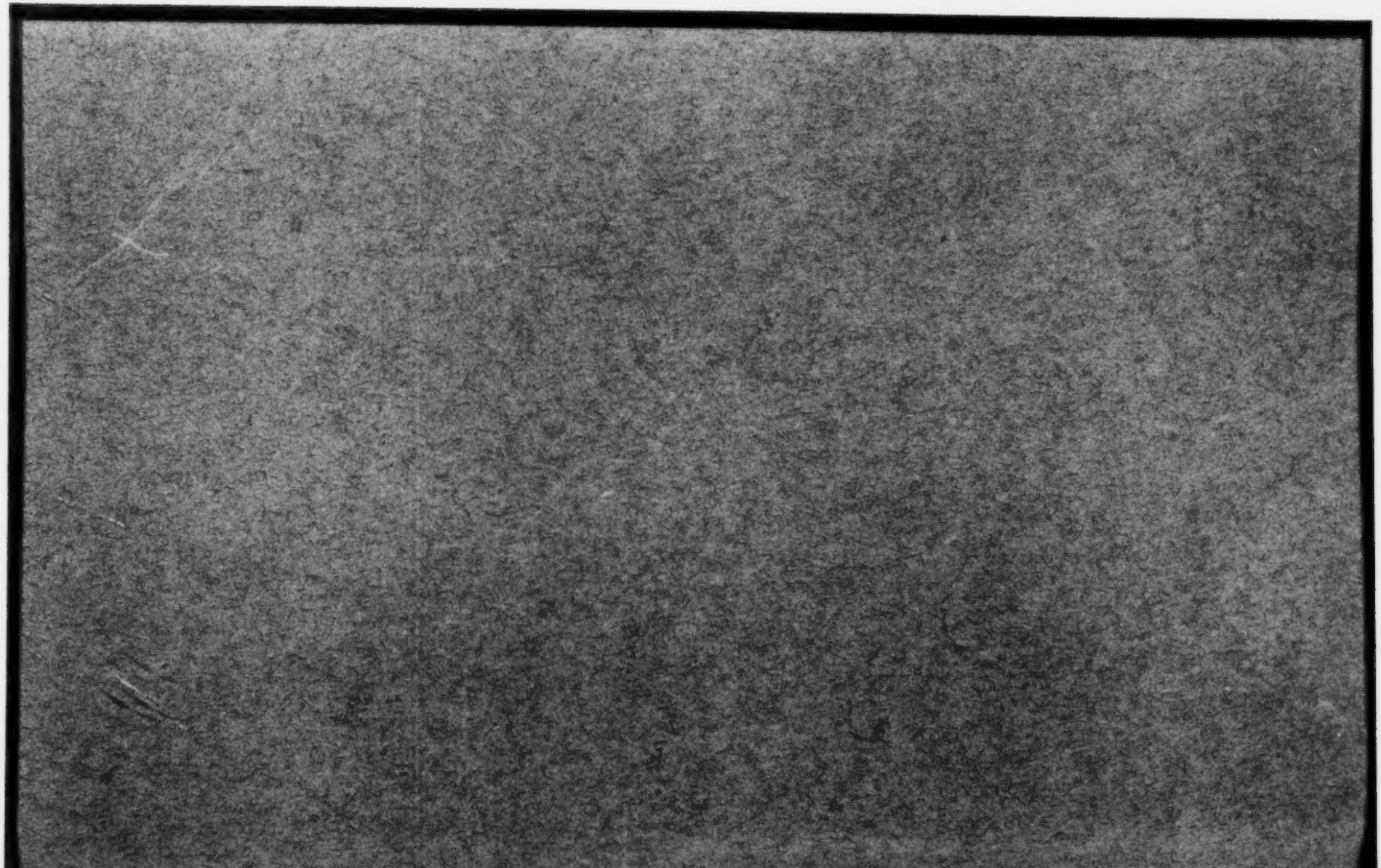

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440708—42——1

# In the Supreme Court of the United States

OCTOBER TERM, 1941

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No. 838

GEORGE T. GOGGIN, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF ACME TRAFFIC SIGNAL COMPANY, A CORPORATION, BANKRUPT, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The opinion of the District Court (R. 2–8) is reported in 37 F. Supp. 352. The opinion of the Circuit Court of Appeals (R. 40–44) is reported in 123 F. (2d) 432.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 18, 1941 (R. 45). The petition for a writ of certiorari was filed on Janu-

ary 5, 1942. The jurisdiction of this Court is predicated upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

In the case of a bankrupt corporation should the capital stock tax imposed by Section 1202 of the Internal Revenue Code and due for a period prior to the adjudication in bankruptcy be computed upon the basis of the value of the capital stock as declared by the company, or upon the basis of the actual value of the company's capital stock?

## STATUTES INVOLVED

The statutes involved appear in the Appendix, *infra,* pp. 8–11.

## STATEMENT

The petitioner is the trustee in bankruptcy of the Acme Traffic Signal Company, a California corporation, which was adjudicated a bankrupt on May 13, 1940 (R. 9). The petitioner refused to sign a capital stock tax return prepared by the Collector of Internal Revenue for the company for the year ending June 30, 1940, whereupon the Collector made the return pursuant to Section 3612 of the Internal Revenue Code (R. 10). In this return the Collector computed the adjusted declared value for the taxable year by taking the adjusted declared value reported by the company in its 1939 capital stock tax return and deducting therefrom the loss sustained by the taxpayer dur-

ing its previous income tax year (R. 10). The adjusted declared value for the year ending June 30, 1940, was thus computed at $184,966.26, upon which the capital stock tax for the year was assessed (R. 10). It is conceded that the capital stock of the company had an actual fair market value of less than $184,000 on June 30, 1940, and that the trustee in bankruptcy was unable to obtain more than $5,100 upon the sale of all the bankrupt's assets (R. 10). The Collector of Internal Revenue presented a claim in the bankruptcy proceeding for the capital stock tax for the year ending June 30, 1940, as computed by him. The referee allowed the claim (R. 13–14). The District Court vacated the referee's order and held that the capital stock tax should be computed in accordance with the real value of the assets of the company (R. 2–8). The Circuit Court of Appeals for the Ninth Circuit reversed the order of the District Court (R. 45).

**ARGUMENT**

1. The taxpayer's petition is bottomed upon an erroneous conception of the nature of the capital stock tax imposed by Section 1202 of the Internal Revenue Code (Appendix, *infra,* p. 8). Its premise is that the tax is one levied upon the actual value of the taxpayer's capital stock. All of the questions raised with respect to the powers of bankruptcy courts are based upon this erroneous premise. We submit that when the true nature of the capital stock tax is perceived, the instant

case presents no questions whatever with respect to the powers of bankruptcy courts under Sections 62 (a) and 64 (a)–4 of the Bankruptcy Act (Appendix, *infra,* pp. 10–11).

This Court has several times pointed out the nature of the tax here involved. *Haggar Co.* v. *Helvering,* 308 U. S. 389; *Helvering* v. *Lerner Stores Corp.* (*Md.*), No. 248, decided December 22, 1941; *Scaife Co.* v. *Helvering,* No. 57, decided December 22, 1941. The capital stock tax is integrated with a complementary excess profits tax. The scheme of these taxes is to allow the taxpayer to place any value it chooses upon its capital stock. The tax upon the capital stock and the correlative tax upon excess profits are computed upon that basis. The figure so declared as the value of the capital stock by the taxpayer cannot be amended and is the basic figure for the determination of the value of the capital stock for subsequent years.

The purpose of this statutory scheme, which began with Section 215 of the National Industrial Recovery Act, c. 90, 48 Stat. 195, was to avoid controversy over the actual value of the capital stock. Earlier Revenue Acts had imposed a tax on the capital stock of the corporation measured by "the fair average value of its capital stock." Revenue Act of 1918, c. 18, 40 Stat. 1057, Sec. 1000. The tax was repealed in 1926 because of the administrative difficulty involved in measuring the actual value of capital stock. See S. Rep. No. 52, 69th

Cong., 1st Sess., pp. 11–12 (1939–1 Cum. Bull. (Part 2) 332, 341); 1 Bonbright, Valuation of Property, pp. 577–595. The present form of the tax was adopted expressly "In order to avoid controversy as to the value of the capital stock * * *." S. Rep. No. 114, 73d Cong., 1st Sess., p. 6 (1939–1 Cum. Bull. (Part 2) 881, 882). See also S. Rep. No. 558, 73d Cong., 2d Sess., p. 5 (1939–1 Cum. Bull. (Part 2) 586). It is obvious that under the express statutory plan a declaration of value is never true or untrue, never erroneous or inaccurate, even though mistakenly declared. See the *Scaife* and *Lerner* cases, *supra*. It is therefore impossible for it to be, as the petitioner here contends, "excessive." So far as *Kentucky Fire Brick Co.* v. *Glenn,* 34 F. Supp. 35 (W. D. Ky.), contains language to the contrary it is inconsistent with the foregoing decisions of this Court.

The statute provides that every third year after the year ending June 30, 1938, shall constitute a new "declaration year." In such declaration years a corporation may place a new value upon its capital stock; that value will be conclusive for the ensuing three-year period. Subsection (c) of Section 1202 of the Internal Revenue Code provides that the capital stock tax year beginning with or within an income-tax taxable year within which bankruptcy is terminated shall be a declaration year. In view of this specific treatment of cor-

porations in bankruptcy there is manifestly no basis for any suggestion that the year in which a corporation is adjudicated a bankrupt should be a declaration year. Therefore unless the value placed upon its capital stock by the bankrupt in its last preceding declaration year be taken as the basis for computation of the tax for the year here involved, there is no figure which can be used.

2. No questions as to the power of bankruptcy courts to determine the legality and amount of claimed taxes are presented in this case. So far as Section 64 (a) (4) is concerned, we have conceded throughout this litigation that a bankruptcy court unquestionably has power under that section to determine the amount of taxes due. But such a determination must be made upon the basis of the facts in the case. The most important fact in the determination of the proper amount of taxes due in this case is the fact of the prior declaration of value. Manifestly Section 64 (a) (2) does not give to bankruptcy courts the power to devise a new tax in place of the one enacted by Congress. The District Court's holding that the capital stock tax here should be computed in accordance with the actual value of the company's capital stock amounted to such a substitution of one tax for another. The court below properly reversed that holding.

Section 62 (a) of the Bankruptcy Act is not even remotely involved here. The capital stock tax is imposed upon the doing of business for any

part of the taxable year. The adjudication in bankruptcy did not come until near the end of the taxable year here involved. Since the company had done business for part of the taxable year prior to bankruptcy, it thereupon became liable for the tax. That liability was properly the basis for a claim by the Government in the bankruptcy proceeding. The tax was not claimed because of any operation of the business by the trustee. It was not an expense in administering the bankrupt estate. The same considerations demonstrate that this case presents no question with respect to whether or not the trustee in bankruptcy is a new taxable entity.

### CONCLUSION

The decision below is correct. No questions are presented with respect to the capital stock tax which are not governed by the decisions of this Court. No questions with respect to the Bankruptcy Act are presented at all. The petition should be denied.

Respectfully submitted.

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JANUARY 1942.